IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8778 OF 2003

Vishwanath Sakharam Tawde..... Petitioner.

Versus

Mahanagar Telephone Nigam Ltd. & Anr....Respondents.

Mr. D. B. Savant for the Petitioner.

Ms. S.I.Shah for the Respondents.

CORAM : V.G. PALSHIKAR, and V.R.KINGAONKAR, JJ.

DATED : 20TH APRIL, 2006.

P.C.:

By this petition, the Petitioner, who was an employee of the Mahanagar Telephone Nigam Limited, has challenged the order dated 4th July, 2003 directing recovery of the sum of Rs.2,13,978/- from the Petitioner's Death Cum Retirement Gratuity Benefit on the ground that the order is unsustainable in law.

2. The Petitioner was initially recruited by the Mahanagar Telephone Nigam Limited as a Boy Peon in the year 1959. In due course of time, somewhere in the year 1990 he was due for some promotion and therefore

he submitted his matriculation passing certificate in which date of birth of the Petitioner was shown to be 16th January, 1942. The service record prepared on Petitioner's joining the service discloses that his date of birth is 16th November, 1942. The error committed by the Petitioner thus came to the knowledge of the Respondent - Corporation in June, 1990, to be precise on 20th June, 1990 when the Petitioner tendered copy of his S. S. C. passing certificate for being kept on his record. From 1991, therefore, the Respondent - Mahanagar Telephone Nigam Limited was aware of the fact that the Petitioner's date of birth is 16th January, 1942 as shown in the S. S. C. Certificate and the entry made at his instance in his service roll showing date of birth 16th November, 1942 is wrong. For 10 whole years, the Mahanagar Telephone Nigam Limited did not take any step to correct the service roll holding the S.S.C. Certificate to be the evidence acceptable to it for changing the entry made in the service record. It is only after the retirement of the Petitioner that the Respondent moved into action and issued the impugned communication.

3. Learned Counsel appearing on behalf of the Respondent - Corporation contended that the Petitioner

cannot be allowed to take benefit or advantage of his own wrong and he ought to have come forward seeking change in the date of birth in his service roll. The Petitioner, according to the learned Counsel for the Respondents, has received salary for a period he was not liable to be continued in the employment of the Respondents and consequently he is not entitled to any such benefit for that period. Factually, it is not disputed that the Petitioner did work from 16th January, 2002 to 16th November, 2002.

4. The principle of law that **wages for work done must be paid** cannot be disputed. The fact that the Petitioner so worked cannot be disputed. In such circumstances, because of the mistake, to which the Respondent was equally party, the Petitioner alone cannot be made to suffer. Interest of justice, therefore, requires that the impugned order dated 4th July, 2003 is liable to be set aside.

5. In the result, the Petition succeeds and is allowed. The impugned order dated 4th July, 2003 is set aside and the Respondents are directed to pay to the Petitioner the entire sum due as mentioned in that communication. Rule made absolute in the above terms.

No order as to costs.

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